

REMARKS

Status of the Claims

Upon entry of the foregoing amendment, claims 112, 115-123, 125, 126, 129-131 and 134 are pending in this application. Claims 1-111, 113, 114, 124, 127, 128, 132, 133, and 135-149 have been cancelled without prejudice or disclaimer of the subject matter claimed therein.

The present amendment cancels claims 135-149. The present amendment does not introduce prohibited new matter.

Improperly Identified Claim

The Office Action states that in the previous amendment new claim 134 was improperly labeled as “previously presented.”

Applicants respectfully point out that claim 134 was presented in the “Request for Continued Examination under 37 CFR § 1.114, submitted on July 15, 2004. Thus, claim 134 was correctly referenced as “previously amended” in the Amendment filed December 21, 2004.

Rejection Under 35 U.S.C. § 112, First Paragraph

Claims 135-149 are rejected under 35 U.S.C. § 112, first paragraph, because the specification does not reasonably convey to one skilled in the relevant art that the inventors had possession of the claimed invention at the time the application was filed.

Without acquiescing to the propriety of the rejection, Applicants have cancelled claims 135-149 without prejudice or disclaimer of the subject matter claimed therein. Thus, Applicants respectfully request withdrawal of the rejection.

Provisional Obviousness-Type Double Patenting Rejection

The Office provisionally rejected claims 112, 115-123, 125, 126 and 129-131 under the judicially created doctrine of obviousness type double patenting as allegedly being unpatentable over claims 1-92 of copending application no. 10/895,323 ('323).

Without acquiescing to the propriety of this rejection, Applicants respectfully point out that this is a provisional obviousness-type double patenting rejection between two applications. MPEP 804 (I)(B) (page 800-19) states,

If the "provisional" double patenting rejection in one application is the only rejection remaining in that application, the examiner should then withdraw that rejection and permit the application to issue as a patent, thereby converting the "provisional" double patenting rejection in the other application(s) into a double patenting rejection at the time the one application issues as a patent.

Since this is the remaining rejection in this application, Applicants respectfully request withdrawal of this rejection in accordance with MPEP 804 (I)(B).

Further, Applicants respectfully point out that '323 has not been examined yet and that a preliminary amendment was submitted on July 20, 2004, replacing the originally filed claims with new claims. Applicants note that the new claims in '323 are patentably distinct from the claims in the present application.

Other Matters

Applicants respectfully provide a listing of related pending U.S. Applications and U.S. Patents for consideration by the Examiner.

<u>Appl. No.</u>	<u>Filing Date</u>	<u>Other Information</u>
08/749,164	11/14/96	U.S. Patent No. 5,910,306
08/896,085	07/17/97	U.S. Patent No. 5,980,898
09/257,188	02/25/99	U.S. Patent No. 6,797,276
09/309,881	05/11/99	Pending
09/311,720	05/14/99	Pending
09/316,096	05/21/99	Pending
09/337,746	06/22/99	Pending
10/435,676	05/12/03	Pending
10/467,887	08/13/03	Pending

10/472,393	05/13/04	Pending
10/472,598	03/12/04	Pending
10/633,626	08/05/03	Pending
10/658,418	09/10/03	Pending
10/790,715	03/03/04	Pending
10/798,948	03/12/04	Pending
10/895,323	07/21/04	Pending
10/928,740	08/03/04	Pending
11/007,282	12/09/04	Pending

Issued U.S. Patents

Regarding U.S. Patent 5,910,306 ('306), a terminal disclaimer is enclosed disclaiming the terminal part of the statutory term of any patent granted on application 09/266,803, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. §§154, 156, 173, as presently shortened by any terminal disclaimer, of prior U.S. Patent 5,910,306.

Regarding U.S. Patent 5,980,898 ('898), the claims of '898 are directed to a patch for transcutaneous immunization. Thus, the claims of '898 are patentably distinct from the claims of the present application.

Regarding U.S. Patent 6,797,276, the claims of '276 are directed to a method of inducing an immune response comprising pretreating an area of the skin and applying a formulation to said pretreated area, wherein pretreating is selected from the group consisting of direct application to said skin, swabbing, applying a depilatory agent, applying a keratinolytic formulation, shaving, tape stripping, abrading and a combination thereof. Unlike the claims of the present application, the claims of '276 do not require applying the formulation to the hydrated skin of an organism. Since hydrating the skin is not an obvious variant of the pretreatment methods encompassed by the claims of '276, the claims of the present application are patentably distinct from the claims of '276.

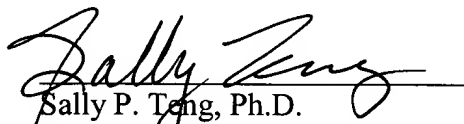
Regarding the pending applications, Applicants respectfully refer the Examiner to the above discussion of the procedure for double patenting rejections between two applications when the double patenting rejection is the only remaining rejection (see MPEP 804 (I)(B) (page 800-19)).

Conclusion

The foregoing amendments and remarks are being made to place the application in condition for allowance. Applicants respectfully request reconsideration and the timely allowance of the pending claims. A favorable action is awaited. If, in the opinion of the Examiner, an interview would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the telephone number provided below.

If there are any additional fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 50-0310. If a fee is required for an extension of time under 37 C.F.R. §1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,
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